



March 20, 2001

Mr. Aric J. Garza
Escamilla & Poneck, Inc.
603 Navarro Street, Suite 1200
San Antonio, Texas 78205

OR2001-1086

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145094.

The Eagle Pass Independent School District (the "district"), which you represent, received a request for any and all documents concerning allegations of sexual misconduct by the requestor being relied upon by the district as a basis for the requestor's suspension. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as Family Code section 261.201. Although you have not specifically raised section 261.201 of the Family Code, we understand the information pertains to allegations of child abuse. Section 261.201 of the Family Code reads in part as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You explain the responsive information pertains to a completed investigation conducted by the district police department involving alleged sexual misconduct by the requestor against one or more district students. In addition, you assert the district intends to turn this matter over to the Maverick County District Attorney's office for further investigation, and that you have already referred the case to Child Protective Services. It appears the entirety of the submitted information was provided to Child Protective Service for purposes of its investigation. We thus find that the requested information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Because you have not cited any specific rule that the district or any investigating agency involved has adopted with regard to the release of this information, we assume that no such regulation exists. Given that assumption, we conclude the requested information is confidential in its entirety pursuant to section 261.201(a) of the Family Code. Consequently, the district must withhold the information pursuant to section 552.101 of the Government Code. Because we are able to resolve the matter under section 552.101 in conjunction with section 261.201(a) of the Family Code, we need not address your arguments or the remaining asserted exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

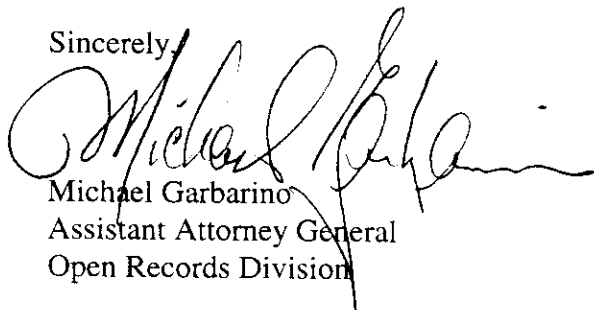
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/DBF/seg

Ref: ID# 145094

Encl. Submitted documents

cc: Mr. Jose Mora
917 Bibb Street #23
Eagle Pass, Texas 78852
(w/o enclosures)